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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,247	03/18/2004	Arthur L. Backman	200TR388	5972

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NOVEON IP HOLDINGS CORP.
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EXAMINER

NOLAN, SANDRA M

ART UNIT PAPER NUMBER

1772

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/803,247	BACKMAN ET AL	
	Examiner	Art Unit	
	Sandra M. Nolan	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 4,7,11 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14 June 2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims

1. Claims 1-12 are pending.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 14 June 2004 was considered by the examiner.
3. The article on HYTREL polymers was not considered because it was undated.

Allowable Subject Matter

4. Claims 4, 7 and 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The prior art of record fails to teach or suggest pipes having all of the features recited in claims 4, 7, and 11-12.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-3, 5-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 07179717A (abstract) in view of Jackson et al (US 6,730,401; filed 09 July 2001).

The Japanese abstract teaches chlorinated polyvinyl chloride (CPVC) (abstract, par. 2) in heat resistant pipes ("use" section).

It fails to teach a co-extruded outer copolyester layer.

Jackson et al teach copolyesters as outer layers in multilayer structures (col. 3, lines 42-64) in which the copolyester, may be a polyetherester and (col. 3, lines 65-67), is coextruded (col. 5, line 62) onto CPVC core layers (col. 4, lines 44-53). The structures have dimensional stability and thermoformability (col. 1, lines 30-36).

The references are analogous because they both deal with CPVC products.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the copolyester outer layer of Jackson on the pipes of the Japanese reference in order to make pipes that have dimensional stability and thermoformability along with heat resistance.

The motivation to employ the copolyester outer layer of Jackson on the pipes of the Japanese reference is found at col. 1, lines 30-36, where the dimensional stability and thermoformability properties of the copolyester-covered multilayer structures is taught.

It is deemed desirable to make pipes from dimensionally stable and thermoformable materials in order to extend the useful lives of the pipes and facilitate production, respectively.

The properties recited in claims 2-3 and 8-10 would be expected in view of the Jackson's use of polyetheresters in its outer layer.

The thickness of layers, per claims 3 and 8, is a matter of engineering choice, depending upon the properties desired in the pipe.

The properties recited in claims 5 and 6 relate to intended use and do not serve to distinguish the pipe of that claim from those suggested by the combination of prior art references.

Citation as of Interest

9. McPherson et al (US 5,366,257) is cited as of interest for showing pipe connectors made from CPVC (col. 4, lines 25-26).

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Conclusion

Any inquiry concerning this communication should be directed to Sandra M. Nolan, whose telephone number is 571/272-1495. She can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan
Primary Examiner
Technology Center 1700

SMN/smn
10803247(20040722)